

## § 89.1

- 89.1005 Injunction proceedings for prohibited acts.
- 89.1006 Penalties.
- 89.1007 Warranty provisions.
- 89.1008 In-use compliance provisions.

AUTHORITY: Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

SOURCE: 59 FR 31335, June 17, 1994, unless otherwise noted.

### Subpart A—General

#### § 89.1 Applicability.

(a) This part applies to nonroad compression-ignition engines that have a gross power output at or above 37 kilowatts (kW) and that are used for any purpose.

(b) The following nonroad engines are not subject to the provisions of this part:

(1) Engines used in aircraft as defined in § 87.1(a) of this chapter;

(2) Engines used in underground mining or engines used in underground mining equipment and regulated by the Mining Safety and Health Administration (MSHA) in 30 CFR parts 7, 31, 32, 36, 56, 57, 70, and 75;

(3) Engines used to propel a locomotive; and

(4) Engines used in marine vessels as defined in the General Provisions of the United States Code, 1 U.S.C. 3 (1992).

#### § 89.2 Definitions.

The following definitions apply to part 89. All terms not defined herein have the meaning given them in the Act.

*Act* means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

*Adjustable parameter* means any device, system, or element of design which is physically capable of being adjusted (including those which are difficult to access) and which, if adjusted, may affect emissions or engine performance during emission testing.

*Administrator* means the Administrator of the Environmental Protection Agency or his or her authorized representative.

*Auxiliary emission control device (AECD)* means any element of design that senses temperature, vehicle speed,

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engine RPM, transmission gear, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.

*Certification* means, with respect to new nonroad engines, obtaining a certificate of conformity for an engine family complying with the nonroad engine emission standards and requirements specified in this part.

*Emission control system* means any device, system, or element of design which controls or reduces the emission of substances from an engine.

*Engine*, as used in this part, refers to nonroad engine.

*Engine manufacturer* means any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines. Engine manufacturer does not include any dealer with respect to new nonroad engines received by such person in commerce.

*Engine used in a locomotive* means either an engine placed in the locomotive to move other equipment, freight, or passenger traffic, or an engine mounted on the locomotive to provide auxiliary power.

*EPA enforcement officer* means any officer or employee of the Environmental Protection Agency so designated in writing by the Administrator (or by his or her designee).

*Family emission limit (FEL)* means an emission level that is declared by the manufacturer to serve in lieu of an emission standard for certification purposes and for the averaging, banking, and trading program. A FEL must be expressed to the same number of decimal places as the applicable emission standard.

*Gross power* means the power measured at the crankshaft or its equivalent, the engine being equipped only with the standard accessories (such as oil pumps, coolant pumps, and so forth) necessary for its operation on the test bed. Alternators must be used, if necessary, to run the engine. Fans, air conditioners, and other accessories may be used at the discretion of the

manufacturer, but no power adjustments for these accessories may be made.

*Identification number* means a specification (for example, model number/serial number combination) which allows a particular nonroad engine to be distinguished from other similar engines.

*Locomotive* means a self-propelled piece of on-track equipment (other than equipment designed for operation both on highways and rails, specialized maintenance equipment, and other similar equipment) designed for moving other equipment, freight or passenger traffic.

*Model year (MY)* means the manufacturer's annual new model production period which includes January 1 of the calendar year, ends no later than December 31 of the calendar year, and does not begin earlier than January 2 of the previous calendar year. Where a manufacturer has no annual new model production period, model year means calendar year.

*New*, for the purposes of this part, means a domestic or imported nonroad engine, nonroad vehicle, or nonroad equipment the equitable or legal title to which has never been transferred to an ultimate purchaser. Where the equitable or legal title to the engine, vehicle, or equipment is not transferred to an ultimate purchaser until after the engine, vehicle or equipment is placed into service, then the engine, vehicle, or equipment will no longer be new after it is placed into service. A nonroad engine, vehicle, or equipment is placed into service when it is used for its functional purposes.

*Nonroad compression-ignition engine* means a nonroad engine which utilizes the compression-ignition combustion cycle.

*Nonroad engine* means:

(1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:

(i) in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) in or on a piece of equipment that is intended to be propelled while per-

forming its function (such as lawnmowers and string trimmers); or

(iii) that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) the engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or

(iii) the engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

*Nonroad equipment* means equipment that is powered by nonroad engines.

*Nonroad vehicle* means a vehicle that is powered by a nonroad engine as defined in this section and that is not a motor vehicle or a vehicle used solely for competition.

*Nonroad vehicle or nonroad equipment manufacturer* means any person engaged in the manufacturing or assembling of new nonroad vehicles or equipment or importing such vehicles or

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equipment for resale, or who acts for and is under the control of any such person in connection with the distribution of such vehicles or equipment. A nonroad vehicle or equipment manufacturer does not include any dealer with respect to new nonroad vehicles or equipment received by such person in commerce.

*Opacity* means the fraction of a beam of light, expressed in percent, which fails to penetrate a plume of smoke.

*Operating hours* means:

(1) For engine storage areas or facilities, all times during which personnel other than custodial personnel are at work in the vicinity of the storage area or facility and have access to it.

(2) For all other areas or facilities, all times during which an assembly line is in operation or all times during which testing, maintenance, service accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to engine manufacture or assembly is being carried out in a facility.

*Presentation of credentials* means the display of the document designating a person as an EPA enforcement officer or EPA authorized representative.

*Test fleet* means the engine or group of engines that a manufacturer uses during certification to determine compliance with emission standards.

*Ultimate purchaser* means, with respect to any new nonroad engine, new nonroad vehicle, or new nonroad equipment, the first person who in good faith purchases such new nonroad engine, nonroad vehicle, or nonroad equipment for purposes other than resale.

*Used solely for competition* means exhibiting features that are not easily removed and that would render its use other than in competition unsafe, impractical, or highly unlikely.

### § 89.3 Acronyms and abbreviations.

The following acronyms and abbreviations apply to part 89.

AECD	Auxiliary emission control device.
ASME	American Society of Mechanical Engineers.

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ASTM	American Society for Testing and Materials.
CAA	Clean Air Act.
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CI	Compression-ignition.
CO	Carbon monoxide.
CO <sub>2</sub>	Carbon dioxide.
EPA	Environmental Protection Agency.
FEL	Family emission limit.
FTP	Federal Test Procedure.
g/kW-hr	Grams per kilowatt hour.
HC	Hydrocarbons.
ICI	Independent Commercial Importer.
kW	Kilowatt.
NIST	National Institute for Standards and Testing.
NTIS	National Technical Information Service.
NO	Nitric oxide.
NO <sub>2</sub>	Nitrogen dioxide.
NO <sub>x</sub>	Oxides of nitrogen.
O <sub>2</sub>	Oxygen.
OEM	Original equipment manufacturer.
SAE	Society of Automotive Engineers.
SEA	Selective Enforcement Auditing.
SI	Spark-ignition.
U.S.C.	United States Code.
VOC	Volatile organic compounds.

### § 89.4 Section numbering.

(a) Sections are numbered sequentially by subpart.

(b) Where two different standards or requirements are concurrently applicable, the model year of applicability is indicated by the number following the main section number. The two digits following the hyphen designate the first model year for which a section is effective.

EXAMPLE: Section 89.304-96 applies to the 1996 and subsequent model years until superseded. If a § 89.304-98 is promulgated, it would take effect beginning with the 1998 model year; § 89.304-96 would apply to model years 1996 through 1997. Therefore, in calendar year 1997, a manufacturer may be certifying both 1997 and 1998 model year engines, requiring the use of different requirements concurrently.

NOTE: Model year 2000 and later will appear sequentially with 1999 and earlier based on the order of the last two digits of the year,